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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

*v.*

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

## MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

SILAS B. AXTELL,
Attorney for Merchant Seamen only,
Counsel for Danish Sailors' and
Firemen's Union, New York Branch.

MYRON SCOTT,
Of Counsel.

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IN THE

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OCTOBER TERM, 1952

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No. 226

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J. LAURITZEN,

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v.

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

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## MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Danish Sailors' and Firemen's Union, New York Branch, through its counsel, Silas B. Axtell, respectfully moves this Court for leave to file a brief as *amicus curiae* on behalf of itself and on behalf of its members upon the ground that it has a primary interest to protect and represent to the Court in the contracts of employment which its members make daily in the port of New York with the operators of ships of various nations, as stated in the affidavit of Fred B. Clausen, representative of the New York Branch of the Danish Sailors' and Firemen's Union, sworn to January 16, 1953, made a part of this Motion, the peti-

tion of the various Danish sailors annexed to and made part of the affidavit of Mr. Fred B. Clausen, and his letter to the Justices of the Supreme Court of the United States, dated January 15, 1953, and for the reasons given in the brief of counsel in support of this Motion.

Respectfully submitted,

Attorney for
Danish Sailers' and Firemen's Union,
New York Branch,
156 Montague Street,
Brooklyn 2, N. Y.

of Counsel.

## Affidavit of Fred Clausen.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952—No. 226

J. LAURITZEN,

Petitioner,

*against*

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

FRED CLAUSEN, being duly sworn, deposes and says: I am agent of the Danish Seamen's Union and of the Danish Firemen's Union with offices at New York. Our headquarters are in Copenhagen, Denmark.

I have seen the statement in the brief of the Petitioner, J. Lauritzen, from which I infer that the Danish Seamen's Unions have been consulted by the Danish Government and have acquiesced in the filing of this brief by Lauritzen.

We have had meetings and discussions on the subject in New York. There are thousands of Danish seamen, members of the Danish Seamen's Union or the Danish Firemen's Union, who sail out of New York in vessels carrying cargoes from New York to foreign ports and bringing back to New York cargoes from foreign ports. These seamen ship and reship out of New York and belong to the American zone of influence. They seldom go back to the old country. Most of them would be glad, no doubt, to become citizens of the United States if the laws of the United States were amended so that they could do so. Most

of the ships on which they work are owned by American interests and operated by shipping agents, brokers and operators from New York and other American ports. While in most instances these men do receive their compensation for personal injury under the Danish Compensation Act, yet the fact that they can go to American courts is of great importance to them for this reason, that the employers or the underwriters will quickly offer reasonable compensation in most instances and claims are amicably settled, but I feel that if the door to this opportunity to obtain justice is closed, the result will be very bad for the interests of those alien seamen who are domiciled in America, many thousands in number.

Annexed is petition signed by seamen. If the time permitted, they would all sign it.

FRED CLAUSEN.

Sworn to before me this
16th day of January, 1953.

CELIA HOLZMAN,
Notary Public,
State of New York.
Qualified Kings County.
No. 24.6951650.
Cert. filed Kings Co. Clk. & Reg.
Term expires March 31, 1954.

## Petition, Annexed to Foregoing Affidavit.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952, No. 226

J. LAURITZEN,

Petitioner,

*against*

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

PETITION TO Fred Claussen, Agent Danish Seamen's Union and Danish Firemen's Union:

We, the undersigned seamen, have been sailing out of ports of the U. S. for years on vessels operated by owners who carry cargoes to foreign ports and bring cargoes from other places in the world to be discharged in the U.S.A.

On Danish vessels we only sign a payroll giving our rating, wages and destination.

We are no longer arrested if we quit before our contract is up. We can leave on 7 days notice. All of these advantages have come to us because of the great LaFollette Seamen's Act.

We earnestly pray that the Judges of this Court shall make no decision that will prevent our petitioning the courts of the U. S. to help us to get justice.

As you know, we have understood for many years when we sign articles in America we get American conditions, no arrest for desertion and we have the Jones Act.

Please relay this information to the Supreme Court for us if you can properly do so and help Evald Larsen to get his money.

ADDRESS
c/o Danish Seamen's Union
156 Montague Street
Brooklyn 2, N. Y.

## Letter.

DANISH SAILORS AND FIREMEN'S UNION
New York Branch
156 Montague Street
Brooklyn 2, N. Y.

Fred B. Clausen — Private: ULster 8-3178
Representative — Phone: MAin 4-3910

Somandenes Forbund I Danmark
Söfyrbodernes Forbund I Danmark

Brooklyn, N. Y., Jan. 15, 1953.

To The Justices of:
The Supreme Court of The United States,
Washington, D. C.

Ref.: J. Lauritzen against Evald Larsen.

Gentlemen:

Enclosed hereby petitions (2) signed by seamen, members of our unions, which have been requested of me to forward to the Supreme Court,—which speaks for itselfs.

Being a seaman myself, who for many years sailed on ships of all nationalities, mostly foreign, I fully understand my fellowseaman and our members, in their request to me, to make sure, that their opinion and wish, that of their rights under american Laws, as granted them under the "La Follette Act" (Seamens Act) and the "Jones Act" while sailing in foreign ships to and from the United States, will be protected and all efforts made, that they may remain.

As I have enjoied the privilege of representing them here in The United States for several years, I fully understand their anxiety of being sure, that the conditions, as contained in the abovenamed Laws, will remain.

I beg of the Justices of this Court, to give this petitions carefull consideration.

Respectfully yours,

FRED. B. CLAUSEN,
Fred. B. Clausen,
Representative,
New York Branch.

Enclosed: 2 petitions.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

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*v.*

EVALD JOHANN LARSEN,

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## MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH

### Statement

As soon as I obtained a copy of the petition and briefs of the parties to this action, I asked for leave to participate in the oral argument and to file a brief *amicus curiae* on behalf of the Friends of Andrew Furuseth Legislative Association. On learning that that could not be done, I prepared a motion so that I might not only file a brief *amicus curiae* but participate in the oral argument as well. Then the parties to the action invited me to file a brief *amicus curiae* and I withdrew the motion to participate in the oral argument.

Although I have been a member of the bar of New York State since 1910 and of this Court since I became admitted for the purpose of arguing the *Chelentis* case,* and had tried, briefed and argued many appeals in the District and Circuit Courts, involving various phases of this Act, including its constitutionality, the opening of the Appellate Courts to seamen without the prepayment of fees including, of course, foreign seamen, Mr. Furuseth and I thought it was wise to get more experienced counsel to argue the *Panama* v. *Johnson*** case, involving the constitutionality of the Jones Act, in *Dillon* v. *Strathearn.****  Wade H. Ellis, former Solicitor General of the United States, was chosen.

Had the seamen been able to have afforded the services of lawyers who were experienced, better trained and more learned, I think perhaps that long ago the uncertainty that still seems to prevail as to the intention of Congress in passing the LaFollette Seamen's Act would have been dissolved.

On page 7 of the brief of Skibsfartens Arbeidsgiverforening Mr. Hemingway says:

> "If the decision of the Court of Appeals in this case is affirmed, Norwegian seamen who sign on Norwegian ships in the United States will have access to a scheme of remedies wholly distinct from the foregoing, which still govern the rights of all other Norwegian seamen. Clearly the intention to interfere with the internal affairs of foreign nations should not be attributed to Congress without a clearer expression than found in the Jones Act."

"The foregoing" refers to his description of the rights the Norwegians enjoy to some insurance fund or compensa-

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* *Chelentis* v. *Luckenbach*, 247 U. S. 372, argued 4/18/18, decided 6/3/18.

** *Panama* v. *Johnson*, 264 U. S. 375.

*** *Dillon* v. *Strathearn*, 252 U. S. 348, 248 U. S. 182.

tion setup under the Norwegian law for the benefit of Norwegian landsmen and Norwegian seamen.

Of course, this criticism applies to the compensation scheme of the Danish Government. Mr. John Lord O'Brian, counsel for the Royal Danish Government says that that government regards the decision below as constituting the abandonment by the United States of the internationally accepted rule of comity that the law of the flag shall govern inernal affairs on board a vessel.

The seamen being poor came to the Seamen's Branch of the Legal Aid Society, 1 Broadway, in 1908, where I was a law clerk. The LaFollette Seamen's Act, first passed in 1912, was then in typewritten form, requiring corrections that even a law student could make.

The Seamen's Act as Andrew Furuseth conceived it was intended to apply to all seamen on all ships and to extend as far as Congress could make it go.

The legislative efforts of organized seamen before 1912 are briefly as follows:

June 9, 1874—Abolition of arrest and imprisonment for desertion in coast and lake trade, U. S.

Apr. 2, 1878—First effort of union organization of seamen.

Mar. 9, 1885—Sailors' Union of the Pacific organized.

June 3, 1886—First strike for higher pay.

Feb. 1, 1887—Andrew Furuseth became secretary of the Sailors' Union of the Pacific.

Mar. 6, 1894—Furuseth went to Washington to lobby for the McGuire Act, passed Dec. 13, 1898.

Dec. 21, 1898—The White Act became a law, the second Furuseth legislative victory, abolishing corporal punishment and giving right to draw half wages on American ships.

May 1, 1899—A strike and increase of membership to 3465.

Apr. 3, 1902—First formal working and wage agreement with Shipowners Association signed.

June 1, 1904—Senator Alger of Michigan introduced Bill to make it a misdemeanor to withhold a seaman's clothing.

Furuseth, born in Norway March 12, 1854, had served under the flags of ships of Norway, Great Britain, Sweden, Holland and the United States before he ran away from a brutal master in a ship at Astoria, Washington, was chased by bloodhounds, and joined with other sailors in trying to organize on Folsom Wharf in San Francisco in 1883.

He had learned about the Constitution of the United States and knew of the case of *Robertson* v. *Baldwin*.* Four union seamen had gone to jail to test the question as to whether the 13th amendment invalidated Sec. 4596 Rev. Stat. The Supreme Court seven to one, Justice Gray not sitting, Justice Harlan alone dissenting, held that the Constitution did not prevent the private owner from putting the seaman in jail if he broke his contract, stating (p. 280):

"We think the power of justices of the peace to arrest deserting seamen and deliver them on board their

* *Robertson* v. *Baldwin*, 165 U. S. 275, reached the Supreme Court and was argued Dec. 15, 1896, decided Jan. 25, 1897.

vessel is not within the definition of the 'judicial power' as defined by the Constitution and may be lawfully conferred upon state officers.''

On page 281:

''We are also of the opinion that, even if the contract of a seaman could be considered within the letter of the Thirteenth Amendment, it is not, within its spirit, a case of involuntary servitude.''

The Solicitor General of the United States appeared for the seamen in that case, as he did in all the other great cases where the seamen's interests required it.*

Having been a director of the Friends of Andrew Furuseth Legislative Association, which was created shortly after Furuseth's death,** I inquired of the Solicitor General of the United States whether he intended to file a brief *amicus curiae* in this case.***

On learning that briefs had been filed on behalf of the governments of Great Britain, Holland, Norway and Sweden to support the petition of J. Lauritzen, a Danish corporate owner, I communicated with the labor groups of all these countries to inform them of the case and inquire whether they would file briefs *amici curiae* for the seaman. The answer from Einar Johansen, Agent of

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* *Bark Endora*, 190 U. S. 169.
*Dillon* v. *Strathearn*, *supra*.
*Sandberg* v. *McDonald* (The Talus, British vessel), 248 U. S. 185.
*Neilson* v. *The Rhine* and
*Hardy* v. *Windrush*, 248 U. S. 205.
*Jackson* v. *Archimedes*, 275 U. S. 463.

** Jan. 24, 1938.

*** Mr. Cummings' letter, dated December 4, 1952, said that they would do it if requested to do so by the Supreme Court of the United States (See Exhibit A).

Norsk Sjomannsforbund (Norwegian Seamen's Association, New York Branch) (who is a director of the Friends of Andrew Furuseth Legislative Association) dated December 4, 1952 (see Exhibit B) was followed by one from Tom Yates, Secretary of the National Union of Seamen of the United Kingdom, both advising that their governments were dropping out of the contest. This was in reply to my statement to him of December 8, 1952.*

Only on January 14, 1953, did Mr. Clausen, Agent of The Danish Sailors' and Firemen's Union, New York Branch, learn that a brief on their behalf, similar to the brief filed by the seamen of Panamanian Seamen's Union by Mr. Jacob Rassner, attorney for petitioner, Herbert Lebovici, of counsel, had not been filed. Hence he wrote his letter, dated January 15, 1953, and signed the petition and we made the motion for leave to file a brief, dated January 16, 1953.

These alien seamen, many of whom are Scandanavian, are good seamen. The briefs submitted here *amici curiae* by Mr. Lebovici and Mr. Graham show that some vessels of Liberian flag registration are owned by corporations of Panama and other countries and that the crews consist of many nationalities. While slavery, or serfdom, on board the ship has been abolished legally, yet these alien seamen are picked up by the immigration officers if they overstay their shore leave longer than 29 days and are put into detention. Add to that hazard their inability to obtain adequate and fair compensation for injuries

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* "Mr. Tom Yates, General Secretary, National Union of Seamen, Maritime House, Old Town, Clapham, London, S. W. 4. The wholesome and salutary action by the Norwegian Seamen's Union and its government blazes the way. I enclose extra copies of this letter and I trust you will send them to the Dutch government, to confirm their position already similar to that of Norway, and a copy to the Danish government and its underwriters. The Danish seamen here, its president and its agent have decided to file a brief amicus curiae on behalf of Larsen the seaman. S. B. Axtell"

sustained in the operation of the ship, the foreign shipowner is placed in a position of advantage over the American flag shipowner. The result is that we will have to increase the subsidy to American ship owners. Except for an Act of Congress not even 50 percent of the Marshall Plan cargoes to Europe would have been carried in American bottoms.

Anticipating that the justices of this Court are willing to receive and consider a petition and brief for these Danish seamen in New York, whose government has permitted its name to be used on the petition and brief of the Petitioner herein, I respectfully submit the following:

## SUMMARY OF ARGUMENT

**The Jones Act was conceived and designed as a relief for all seamen on all ships sailing out of ports of the United States and the Danish seamen, as members of the Danish Sailors' and Firemen's Union, New York Branch, employed in New York and sailing out of New York, should have this relief.**

In 1915 the only American seamen were those employed in the coastwise vessels of the United States; a few tankers of oil companies; some ships carrying pineapples from the Hawaiian Islands and salmon and supplies to Alaska, plus the four old 12,000 ton steamers, ST. LOUIS, ST. PAUL, PHILADELPHIA and NEW YORK, known as the American Line. The officers of those vessels had to be citizens of the United States but they were all naturalized and while they kept mailing addresses in New York, all of them lived in England. The engineroom crew were British nationals from Liverpool. Some of the deck hands were American seamen.

As to whether the *Jones Act* applies to foreign ships there is no doubt that its framers intended ~~that~~ it should. The *Chelentis* case (*supra*) was lost because of the reason-

ing of Justice McReynolds that the common law of the land or an Act of the legislature of Maryland creating a workmen's compensation act could not be extended to the maritime jurisdiction or disturb the uniformity of the maritime law.

We then sought the advice of ex-Senator George Sutherland, who had fought hard for the Seamen's Act while he was in the Senate. He took us to the office of Senator Wesley M. Jones, Chairman of the Committee on Commerce of the United States Senate. The senator gave the matter priority. Senator Jones agreed that any amendment of the Seamen's Act in the absence of a provision that it should not apply to foreign vessels would be applicable as a condition of entry to any foreign vessels which came into ports of the United States.

The word "any" had been used in Sec. 20 of the Seamen's Act in this way:

> "in any suit to recover damages"

We changed it to read:

> "any seaman who shall suffer personal injury in the course of his employment may at his election maintain an action for damages at law."

I will say now, as we all agreed then, the word "election" will give to any seaman, foreign as well as American, the right to choose compensation under the maritime law as it is understood and enforced in America or to take what he is offered under the law of the ship's flag.

As stated, in argument in two previous cases, *McAllister** and Hust**, this particular phraseology about the election to sue, in the Jones Act, was suggested by the fact

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* *McAllister* v. *Cosmopolitan Shipping Co.*, 337 U. S. 783, 1949 A. M. C. 1031.

** *Hust* v. *Moore McCormack*, 328 U. S. 707, 1946 A. M. C. 727.

that the Circuit Court of Appeals in the Third Circuit was then considering the question of whether a right to a jury trial had really been saved to seamen by the amendment to the Judicial Act which created the jurisdiction in admiralty. See *Berg* v. *Philadelphia & Reading R. R.*†

It was not the intention of the framers of the Jones Act to disrupt the commerce of the world or to mandate the courts, by requiring all foreign owners to pay their seamen damages in accordance with the maritime law of the United States. The seamen and their lawyers knew about the decisions of the Supreme Court in *The Osceola**, *Harden* v. *Gorden*** and *Reed* v. *Canfield****, in the 1820's. It had been the policy of our courts to take jurisdiction of worthy cases of seamen in spite of the comity rule.

Within the next fifty years the cargo carrying vessel owners of the world stilled the protests and saved the expense of litigation by a series of commercial treaties. When the Seamen's Act was drafted it directed the President to abrogate all those treaties and let them be rewritten in such a way as would permit these seamen to have access to our courts as they always had****

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† *Berg* v. *Philadelphia & Reading*, 274 Fed. 534.

* *The Osceola*, 189 U. S. 158.

** *Harden* v. *Gorden* (1823), Fed. Cases 6047, page 485, 2 Mason 541.

*** *Reed* v. *Canfield*, 20 Fed. Cases, page 426, Case #11, 641.

**** *Gambera* v. *Bergoty*, 132 F. (2d) 414, 1943 A. M. C. 45 (2 Cir. 1942), cert. den. 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699.

*Gerradin* v. *United Fruit Co.*, 51 Fed. (2d) 417, writ den. by this Court, 287 U. S. 642.

*Kyriakos* v. *Goulandris*, 151 F. (2d) 132, 1945 A. M. C. 439, no writ applied for.

*Taylor* v. *Atlantic Maritime*, 179 Fed. (2d) 597, writ cert. to this Court denied, 341 U. S. 915.

*Larsen* v. *Lauritzen*, 196 Fed. (2d) 220, writ cert. granted.

In the *Gambera* case although the libellant was not a citizen and was technically an alien ~~enemy~~, jurisdiction was sustained and this statement by the Court was made (at p. 46):

> "The Jones Act was the culmination of a series of efforts, largely those of the Seamen's Union, to secure some adequate relief for American seamen injured in their employment. It is extremely unlikely that Congress should have meant to exclude aliens who, in every sense that mattered, were members of that class merely because they had not been naturalized."

The argument of the lawyers for the owners of the *Strathearn* (supra) was that the contract between the British ship-owner and the seamen was valid when it was made in England and that the contract would have to be respected, that we were taking property without due process of law. The Court held that by entering the jurisdiction of the United States, the shipowner had waived his constitutional right. All this Court did was to uphold the doctrine that had been so forcefully stated in the *Schooner Exchange** where Justice Marshall said:

> "The jurisdiction of a nation within its own territory is necessarily exclusive and absolute."

In the case of *Carroll* v. *Waterman SS Agency*,** Judge Clancy, (affirmed by C. C. A.), awarded $10,000.00 damages to an alien seaman who signed articles in Belfast, Ireland, in 1943, for serious injuries caused by the negligence of a coservant. This Italian ship had been seized at Hoboken, N. J.—1941 by the United States Government but was under charter of the Waterman Steamship Company to operate the ship under the flag of Panama for the deliber-

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* *Schooner Exchange*, 7 Cranch 116 (p. 136).

** *Carroll* v. *Waterman*, 1942 A. M. C. 1380, 1943 A. M. C. 339.

ate purpose of carrying cargo to the war zone, which it couldn't legally do under the neutrality law if the vessel were under the flag of the United States.

The same judge in the case of *Koziol* v. *S. S. Fylgia and Stockholms Rederi A. B. Svea* (not yet reported),** in November, 1952, dismissed a libel as well as a common law action on the authority of the decision of Judge I. R. Kaufman, Southern District of New York, in *Catherall* v. *Cunard.****

Koziol, a dispossessed citizen of Poland, having served in the underground and escaped the communists in 1946, was homeless, and had been shipping out of this pool of alien seamen from New York ever since. Due to a visit ashore in Buenos Aires, under the seven-day notice of intention to leave, which is common in all these Scandinavian vessels, he signed on the Swedish ship Fylgia to come back to New York, intending to pay off in New York again and reship. On his way he fell down some slippery stairs and he now suffers from partial paralysis of his left arm and left leg. Will he be able to make a reasonable settlement? Before the man sought legal advice, he tried to settle his claim with the owner's agent and the Swedish consul, with no success. After the complaint and libel were dismissed in November, on advice of counsel, he returned to the agent and the insurance adjuster and again was told that nothing could be done for him. Is this Polish alien to go to Stockholm?

Zygmunt K. Zawistowski, a dispossessed Polish gentleman who fought against the Germans in the last war and escaped the communists, who can not return to his native land, but fortunately has legal entry here as a dispossessed

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** *Koziol* v. *s/s Fylgia and Stockholms Rederi A. B. Svea*, not yet reported.

*** *Catherall* v. *Cunard*, 1952 A. M. C. 135, 101 Fed. Supp. 230.

person, in November 1952, jumped to the rescue of a co-servant on a Honduras ship, the Telde, under time charter of the United Fruit Company but owned by an independent Honduras corporation. In doing so he sustained injuries to his spine which will disable him for life. Since the facts in the case are such that a jury could award him damages, he has a case which the owners at the present time will consider settling. But supposing the Larsen case is upset, how is this man, who is barely able to live as it is, to go to Honduras? What court of the United States can enforce the terms of a compensation act of Honduras, if we find that they have one? He has a wife and children whom he has supported up to now. Who is to provide for their care? The public? While the owners profit from the carriage of cargoes of bananas from Honduras to New York which are sold to our taxpayers?

Judge Hand, speaking for the Circuit Court, in affirming *Gambera* v. *Bergoty* (*supra*), said that the Court considered that the decision in *Hogan* v. *Hamburg American Line** and in *Seirstadt* v. *Anderson*** had been overruled by the decision of the Supreme Court in the *Jarka* case.***

Another argument I would like to answer that I have seen in these briefs is about the jurisdictional clause at the end of the Jones Act, which reads:

> "Jurisdiction in such actions shall be under the Court in which defendant employer resides or in which his principal office is located."

This provision was added to the Act after it left the office of Senator Jones. It got attached in the conference between a House committee and a Senate committee.

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* *Hogan* v. *Hamburg American Line*, 295 U. S. 729.

** *Anderson* v. *Seirstadt*, 1926 A. M. C. 564, 726, 1928 A. M. C. 1241, 27 Fed 2d 982.

*** *Uravic* v. *Jarka*, 282 U. S. 234.

The Emergency Fleet Corporation in a suit under the Jones Act compelled the plaintiff to sue in Washington on the ground that their office and principal place of business was there. As a result of the jury verdict they afterwards decided it was just as cheap to appear in New York.*

Since amendment of the Judiciary Act our Federal courts held he can get jurisdiction of a foreign shipowner by serving the Master of his vessel—*Neset*,** or by serving his cargo agent, *Szabo*.***

A very important decision by Judge Learned Hand made from the bench (1924) on a motion to dismiss, in the Southern District when he was a District Judge, was made in the case of *Stewart* v. *Pacific Navigation Co.* **** This was the case of a British subject who was hurt on a British ship while she was coming through the Panama Canal. The case was settled after the judge's denial of motion to dismiss and no appeal was taken. It was reported as a case in admiralty. Years afterwards the error was corrected. (I called this to the attention of Judge Hand at the time I argued the *Taylor* v. *Atlantic Maritime* case (*supra*).) The shipowner's counsel argued that the Jones Act was not intended to apply to a British ship because of the language of the jurisdictional clause, much as counsel for Petitioner here does, and Learned Hand disposed of the argument in the following language:

> "The general bestowal of jurisdiction, is to be found in the right sentence, the long one; it lays down what the right shall be and against whom it shall exist. As I have already said, this language is general; there

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* *O'Shea* v. *U. S. S. B. E. F. C.*, 1925 A. M. C. 959, Fed. Supp. 123.

** *Neset*, 92 F. Sup. 78, 1950 A. M. C. 1832.

*** *Szabo*, 95 F. Supp. 519, 1951 A. M. C. 481.

**** *Stewart* v. *Pacific Navigation*, 1924 A. M. C. 1272. A motion was made which resulted in the error being corrected, 1950 A. M. C. 147.

is no indication of any purpose to limit it to U. S. corporations, and it would be highly unreasonable to impute any such purpose to Congress, for the result would be not only to deprive American seamen of the protection which the Act was meant to give them when serving on foreign ships, but to give advantage to such ships as against American ships. We all know that the purpose of Congress is directly the opposite. That being very clear the main purpose of the Act, how am I to interpret the last sentence, which confers jurisdiction? It seems to me that this would be very easy in the case of a foreign corporation. The phrase 'in which its principal office is located' clearly means in which the principal office of the foreign steamship company is located within the United States."

One reason Judge Hand was so certain in 1924 that the Jones Act was intended to apply to foreign vessels was that he remembered my argument and his decisions in the *Wabasha* (*Low Ling Sing*)* and the *Mattes*** cases. The Standard Oil Company of New Jersey had a subsidiary known as the Standard Transportation Company. The Wabasha was built in Germany and operated under the British flag. They hired a crew of seamen in New York at about $80.00 a month and the captain fired them all in Algiers and hired a new crowd for the run to Shanghai. At Shanghai he hired a Chinese crew at $7.00 a month. When the Chinese crew came in to New York they demanded half wages under R. S. 4596. Their case was tried by Judge Learned Hand at the same time as the case of the seamen who had been fired in Algiers. He awarded $12,000 damages to the men illegally discharged at Algiers and also gave judgment for wages to the Chinese who were allowed 90 days for reshipping.

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* *Low Ling Sing* v. *Standard Transp. Co. The Wabasha*, 274 Fed. 1017.

** *Mattes* v. *Standard Transp. Co.*, 274 Fed. 1019.

An intimation of the ruling that eventually came down in the *Taylor* v. *Atlantic Maritime* case (*supra*) was found in the dissent of Judge Learned Hand in *Kyriakos* (*supra*), where he said:

> "Further, unless we are to override the *Paula** liability in these circumstances will hereafter depend upon whether the foreign seaman signs on in a United States port or abroad."

When he wrote the decision in the *Taylor case* (*supra*), Judge Hand did not refer to his decision in *Stewart* v. *Pacific Navigation* (*supra*). He did remember, however, his statement in the *Kyriakos* case (*supra*) that a foreign seaman signed on in America with the implied condition that he would have the advantage of the maritime law of the United States. In the *Taylor* case he said:

> "We have denied recovery to an alien who was injured on the high seas and who signed articles in a foreign port (O'Neil)** although he had resided in this country for twenty years and had applied for naturalization and this we held in spite of the fact that for the purposes of the Jones Act such a continued residence puts a seaman in the same position as an American citizen. (*Gambera* v. *Bergoty* (*supra*)). Hence if the libellant, a non-resident alien, had not signed the articles in Norfolk, he could not have invoked the Act; and if he was entitled to recover at all, it must have been by virtue of that fact."

There has, of course, been some discussion about what law applies. Whether it is the law of the land where the vessel was lying, in this case Cuba; or the Danish land law,

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* *The Paula* (EDNY 1937), 17 F. Supp. 555, 1937 A. M. C. 63, affirmed (C. C. A. 2d 1937) 91 F. 2d, 1001, 1937 A. M. C. 988, cert. den. (sub. nom. *Peters* v. *Lauritzen*), 302 U. S. 750.

** *O'Neil* v. *Cunard*, 1947 A. M. C. 505, 160 Fed. (2d) 446.

a compensation act like the Maryland Statute in *Southern Pacific* v. *Jensen* (*supra*), or the maritime law.

We rely upon the uniform rule that the maritime law controls, as stated by Chief Justice Hughes in the *Imbrovek* case (*supra*) at page 59; quoting from *The Philadelphia*:*

> "* * * the court said: 'The jurisdiction of courts, of admiralty, in matters of contract, depends upon the nature and character of the contract; but in torts, it depends entirely on locality'."

He then quotes from Justice Story's decision in *The Plymouth***, at page 35:

> "The jurisdiction of the admiralty over maritime torts does not depend upon the wrong having been committed on board the vessel, but upon its having *been committed* on the *high seas* or other navigable waters. A trespass on board of a vessel, or by the vessel itself, above tide-water, when that was the limit of jurisdiction, was not of admiralty cognizance. The reason was, that it was not committed within the locality that gave the jurisdiction. The *vessel itself was unimportant.* * * * The jurisdiction of this admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality—the high seas, or navigable waters where it occurred. Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance." * * * (Italic ours.)

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* *The Philadelphia*, 23 How. 209.

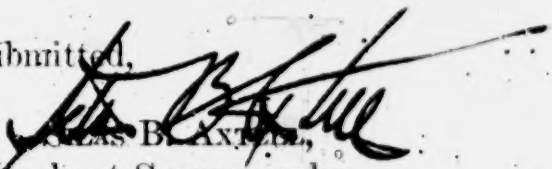
** *The Plymouth*, 3 Wall. 20.

*** See *Manro* v. *Almeida*, 10 Wheat. 473; *The Lexington*, 6 How. 344, 394; *The Commerce*, 1 Black, 574, 579; *The Rock Island Bridge*, 6 Wall. 213, 215; *The Belfast*, 7 Wall. 624, 637; *Ex Parte Easton*, 95 U. S. 68, 72; *Leathers* v. *Blessing*, 105 U. S. 626, 630; *Panama Railroad* v. *Napier Shipping Co.*, 166 U. S. 280, 285; *The Blackheath*, 195 U. S. 361, 365, 367; *Cleveland Terminal & Valley R. R. Co.* v. *Cleveland Steamship Co.*, 208 U. S. 316, 319.

While a liberal application of the maritime law to this case would permit seamen on foreign vessels to elect to sue under the maritime law here regardless of where they signed, we think that an affirmance of the decree of the case at bar by the Circuit Court in the Second Circuit is enough.

In Conclusion, we submit that what the Petitioner requires and should have is a definite and certain affirmance of the decision of the Court of Appeals of the Second Circuit. The members of the Danish Sailors' and Firemen's Union, New York Branch, have an important and substantial interest requiring such affirmance. The Jones Act was conceived, drafted and amended to benefit all seamen, American and foreign alike.

Respectfully submitted,



Attorney for Merchant Seamen only,
Counsel for Danish Sailors' and
Firemen's Union, New York Branch.

Myron Scott,
Of Counsel.

## Exhibit A.

COPY

OFFICE OF THE SOLICITOR GENERAL
Washington, D. C.

December 4, 1952

Silas Blake Axtell, Esq.,
15 Moore Street
New York 4, New York

Re: Lauritzen v. Larsen, U. S. Supreme Court,
October Term, 1952. No. 226

Dear Mr. Axtell:

Your letter of November 25, 1952, requests this Office to participate in the above case, apparently by way of a brief *amicus curiae* in support of the respondent.

We had previously been asked by counsel for the petitioner to file a brief in support of his position, and had declined to do so. We have concluded, as we told petitioner's counsel, that no interest of the United States calls upon this Department to support the position of either of the parties, or to present a brief to the Supreme Court, unless, of course, the Court itself invites the filing of a brief *amicus curiae*.

Sincerely yours,

Signed WALTER J. CUMMINGS, JR.
Solicitor General

## Exhibit B.

NORSK SJOMANNSFORBUND

NORWEGIAN SEAMEN'S ASSOCIATION
New York Branch

156 Montague Street
Brooklyn 2, New York, U. S. A.

Tel. Main 4-3910

Telegram-Addresse
Norforbund, New York

Brooklyn 2, N. Y. 4. December 1952

EJ/anr

Mr. Silas Blake Axtell
15 Moore Street
New York 4, N. Y.

Dear Mr. Axtell:

I have received your hand-written note that the Dutch Government has quit the Larsen case and why not call of the Norwegian.—

I refer to previous correspondence about this case, and can inform you that the Norwegian Government upon recommendation from the Norwegian Seamen's Union, has decided not to file any brief.

Very truly yours,

NORWEGIAN SEAMEN'S ASSOCIATION
E. Johansen
EINAR JOHANSEN.